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sage of fish, nor that the rights of the plaintiff, under section 1355 of the Code, have been infringed by the defendant in raising the height of its dam.

Upon the whole case, we find no reversible error in the judgment of the circuit court, and it must be affirmed.

Affirmed.

CLARK *v.* NAVE'S CREDITORS

Nov. 12, 1914.

[83 S. E. 547.]

1. Judgment (§ 795*)—Lien—Duration—Agreement between Parties.—Code 1904, § 3573, prohibits any suit to enforce the lien of a judgment upon which the right to issue an execution or bring a scire facias or an action is barred by sections 3577 and 3578. Section 3577 provides that, where execution issues within a year, other executions may be issued or a scire facias issued or brought within 10 years from the return day of an execution on which there is no return, or within 20 years from the return day of an execution upon which there is a return by an officer. Section 3578 provides that no execution shall issue nor scire facias or action be brought on a judgment after the time prescribed in the preceding section, except that any time during which the right to sue out execution on the judgment is suspended by the terms thereof or by legal process shall be omitted. Plaintiff had recovered a judgment under an agreement with the debtor that no execution thereon was to be placed in the hands of the sheriff so long as the debtor made payments as specified. More than ten years after the first execution was issued and ordered to lie plaintiff secured the issuance of a second execution, which was returned, "No property found," and then instituted a suit to subject certain property which the debtor had conveyed to the lien of the judgment: Held, that the agreement did not come within the letter of the exceptions mentioned in the statute, and the plaintiff was not within the equity of those sections, since he could have kept his judgment alive by securing the issuance of executions, ordered to lie, or by scire facias.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 1388-1394, 1397-1406; Dec. Dig. § 795.*]

2. Limitation of Actions (§ 5*)—Statutes—Exceptions.—Exceptions to the operation of the statute of limitations must be found in the statute itself, and will not be added thereto by the courts.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. §§ 13-15; Dec. Dig. § 5.*]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes

Appeal from Circuit Court, Rockingham County.

Suit by one Clark, in behalf of himself and other lien creditors, against J. H. Nave and another to subject certain real estate to the liens. Decree for the defendants, and complainant appeals. Affirmed.

Sipe & Harris, of Harrisonburg, for appellant.

D. O. Dechert, of Harrisonburg, and *C. R. Winfield*, of Broadway, for appellees.

BUCHANAN, J. In the year 1902 the appellant, Clark, instituted two actions at law; one against J. H. Nave individually; and the other against said Nave and H. H. Hall. On the 16th of April of that year the parties to the actions entered into an agreement in writing by which the pleas filed were to be withdrawn, and judgment entered in each case for the plaintiff for certain named sums, respectively, but "no execution was to be put in the hands of the sheriff" on the judgment against Nave individually, "for 12 months" from the date of the agreement; and, if within that time Nave pays to said Clark the sum of \$100 thereon that no execution was to go into the hands of the sheriff for another 12 months; and Nave was to have a further extension of credit on said judgment of 12 months for each \$100 paid until the judgment was satisfied. No payments were made in accordance with the agreement. Judgment was entered in each case at the April term of the court for the year 1902 for the amount agreed upon. There is no controversy here except as to the judgment against Nave individually, which was for \$600. On the 30th of that month execution was issued returnable to the July rules following, and indorsed upon it were the words, "Ordered to lie." On the 8th of April, 1913, another execution on said judgment was issued, went into the hands of the sheriff, and was returned, "No property found," on the 14th of that month. In May following Clark instituted a suit in chancery in behalf of himself and all other lien creditors of Nave, to subject certain real estate owned by him at the time said judgment was rendered, but which he had subsequently conveyed to B. F. Helbert by deed dated in January, 1909, and recorded in July, 1910. Helbert was made a party defendant to the creditor's suit.

[1] In his defense to the suit Helbert relied upon the statute of limitations, claiming that, as more than ten years had elapsed from the return day of the first execution until the suing out of the second execution, in April, 1913, the right to enforce the judgment against the property purchased by him was barred. The court sustained Helbert's defense of the statute of limitations, and refused to subject the land conveyed to him to the payment of said judgment.

By section 3573 of the Code it is provided that:

"No suit shall be brought to enforce the lien of a judgment upon which the right to issue an execution, or bring a scire facias, or an action, is barred by sections thirty-five hundred and seventy-seven and thirty-five and seventy-eight."

Section 3577 of the Code provides that:

"On a judgment, execution may be issued within a year, or a scire facias, or an action may be brought within ten years after the date of the judgment; and where execution issues within the year, other executions may be issued, or a scire facias or an action may be brought within ten years from the return day of an execution on which there is no return by an officer, or within twenty years from the return day of the execution on which there is such return. * * *"

Section 3578 of the Code declares that:

"No execution shall issue, nor any scire facias or action be brought, on a judgment in this state, other than for the commonwealth, after the time prescribed by the preceding section, except that, in computing the time, any time during which the right to sue out execution on the judgment is suspended by the terms thereof, or by legal process, shall be omitted. * * *"

The question involved in this case is not affected by the other provisions of sections 3577 and 3578 which have not been quoted.

From July rules, 1902, the return day of the execution issued and ordered "to lie," until April, 1913, when the other execution was issued, more than ten years had elapsed. The right to sue out execution upon the judgment was not suspended by legal process nor by the terms thereof; for the agreement between the parties of April 16, 1902, was not made a part of or referred to in the judgment. But it is insisted by the appellant that the right to sue out execution on the judgment was suspended by the agreement of April 16, 1902, and that under the terms of section 3578 the time of the suspension provided for in the agreement must be excluded in computing the time within which execution may issue upon the judgment as fully and as effectually as if the terms of the agreement had been embodied in the judgment.

This contention cannot, we think, be sustained. The agreement of April 16, 1902, and the subsequent agreements as to further time in which Nave might pay, as stated in the appellant's amended bill, did not prevent the appellant from having executions issued from time to time and ordered "to lie," or from issuing a scire facias or bringing an action on the judgment, and thus keeping his judgment lien in force. Those agreements, it is conceded by the amended bill, only prohibited Clark from placing executions on the judgment in the hands of the sheriff if the conditions named were complied with.

[2] The appellant is clearly not within the letter of section 3578 of the Code, for his right to enforce the lien of his judgment was not prevented either by legal process or by the terms of the judgment. Nor is it within the equity of the section if it were permissible for the court to go beyond its letter in construing it; for, as we have seen, there was nothing in his agreement or agreements to prevent him from keeping alive the lien of his judgment by having executions issued and ordered to lie, or from bringing a scire facias or action. It seems to be well settled, however, that exceptions to the operation of the statute of limitations must be found in the statute itself. *Bickle v. Chrisman's Adm'r*, 76 Va. 678, 684-686, and authorities cited; *Morris v. Lyon*, 84 Va. 331, 333, 4 S. E. 734; *Liskey v. Paul*, 100 Va. 764, 768, 769, 42 S. E. 875, and authorities cited.

In the case of *Bickle v. Chrisman's Adm'r*, which was a suit to set aside a voluntary conveyance, it was said by Judge Staples (76 Va. 685), delivering the opinion of the court:

"It has * * * been held that infants, like other persons, would be barred by an act limiting suits at law, if there was no saving clause in their favor. *Angel on Limitations*, p. 205. Indeed, the principle seems to be settled that, unless there can be found in the statute itself some ground for restraining it, it cannot be restrained by arbitrary additions or amendment. Unless, therefore, we are prepared to limit the operation of the sixteenth section by some sort of judicial legislation, we must hold that the lapse of five years is an absolute bar to a suit to impeach the conveyance, gift, or assignment, unless, indeed, the plaintiff is laboring under some disability expressly provided for under the general statute of limitations."

In the case of *Liskey v. Paul*, *supra*, 100 Va. 768, 42 S. E. 877, it was said:

"Section 2922 of the Code provides within what period demands like those sued on must be brought. If they are not brought within that period, it would be frittering away the statute to allow the action to be brought after the time prescribed, unless the plaintiff can show that his case is one which the Legislature has declared shall be expected."

The appellant in this case has not only not brought himself within any exception found in the statute, but there is nothing in the agreements relied on, even if such agreements could be considered, to relieve him from the bar of the statute.

The court is of opinion that there is no error in the decree complained of to the prejudice of the appellant, and that it should be affirmed.

Affirmed.